

United States District Court
District of Massachusetts
First Circuit
Action: 04-11811-NMG

Juan Villar-Sanchez, Pet.

- vs -
Joseph McDonough, Res

~~Motion of Opposition~~
~~to Respondents~~
~~Motion to Dismiss~~

Dated: 9-20-04

J. v. S.

Now Comes Forth, the petitioner Juan Villar-Sanchez, who respectfully moves this Honorable Court to Dismiss the respondents claims. In the alternum the petitioner will provide facts to this Court to substantiate his methods of matter. The petitioner offers the following set reasons to support

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his legalise;

1. The respondent states in his motion to dismiss, that the petitioner herein recognized as (peti.), has failed to state a claim upon which relief can be granted, as per the Fed. R. Civ. P. 12(b)(6), this in context is false as per the mere filing of 28 U.S.C. A. sect. 2254 is the ground sought, as e.g. the relief to which the claim can be granted, [Immediate Release], In addition it is further stated that the petitioner (peti) has failed to exhaust
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(1. Cont)-

all his state remedies as per 28

U.S.C. sec. 2254 (b)(1)(a), however

in matters of severe constitutional violations

or a conviction riddled with core infirmities

that shake the very basis of one's rights,

jurisdiction lies within the Constitutional

realm of the Federal Courts. Not saying

that State Courts are lesser knowledgeable,

it is just that this is an immediate

recourse, because the questions to be raised

are Federal Constitutionality questions of

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(1. Cont)

law. And this offess the peti. immediate recourse, instead of being placed in waiting, for the myriad of obstacles offered up by the appeals system.

2. With regard to this matter the petitioner states his conviction is riddled with holes, and could never be upheld by any prong tests offered up. The charges are based on constitutional deficiencies and violations to the peti. rights. The case and reports doesn't support trafficking but yet the

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(2. Cont)

peti is convicted of being hands on,

The petitioner offers that he should be allowed to address this Honorable Court and speak to the Court and as counsel with regard to the case at hand.

3. The peti. asserts that the respondents motion to dismiss contradicts itself with the Memorandum of Law. This is not an ordinary case, and in light of the fact that circumstances warrant the circumvention of state remedies, the Motion should be

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(3. cont)

granted, and the respondents motion denied.

4. At the time of filing there were no indications of appeal, the matter of that was raised as a pro-se motion to appeal of behalf of the M.C.I. Concord, and counsel, however new information as to appeal was added after the docketing of this action. The contention of the respondent is to show that this was known, however a mere check of the

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(4. cont)

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dates shall prove otherwise.

Conclusion

Wherefore based on this opposition it is prayed that this Court, dismiss the respondents Motion to Dismiss, and move forward with action showed herein and in the original filing of Immediate Release, and any other actions deemed fit.

It is prayed that the relief sought is granted.

Signed and deposed this 20th day, in the first month of September, in the 2004th Year of our Lord.

Testified: Brown v. Villar
Juan Villar-Sanchez

CERTIFICATE OF SERVICE

I, Juan Villar Sanchez, hereby certify that I have this day served the foregoing Motion to Dismiss Respondents Motion to Dismiss or in Alternam Opposition

by mailing, first class, postage pre-paid, copies of same to

United States District Court, One Courthouse
Way Suite 2300, Boston Ma 02210 Magistrate
Office

Dated: 9-20-04

Juan Villar Sanchez
Pro Se